

OPEN SPACE COUNCIL
September 16, 2015
9:00 a.m.
Legislative Hall
Senate Hearing Room, Second Floor
Dover, Delaware

ATTENDANCE

Council Members:

Mr. John R. Schroeder, Chairperson
Representative Gerald Brady
Senator Bruce C. Ennis
Mr. D. Wayne Holden
Mr. David A. Humes
Paul H. Boswell, Esq.
Mrs. Lorraine M. Fleming
Mr. C. Porter Schutt III
Mrs. Dorothy P. Leventry

Ex-Officio:

Raymond E. Bivens, State Liaison Officer, LWCF, DNREC

Advisory To:

David S. Small, Cabinet Secretary, DNREC, State of Delaware (present)

Staff:

William Kassab, Esq., DOJ
Timothy Slavin, Historical & Cultural Affairs, DOS
David Saveikis, Fish & Wildlife, DNREC
Matthew Chesser, Parks & Recreation, DNREC
Ron Vickers, Parks & Recreation, DNREC
Elena Stewart, Parks & Recreation, DNREC
Richard Phifer, Fish & Wildlife, DNREC
Michael Valenti, Forestry, DDA
Kyle Hoyd, Forestry, DDA
Patrick Emory, Community Services, DNREC
Kimberly Cole, DNERRS, DNREC
Robert Haynes, DNREC
Holly Vaughn Wagner, Division of Research, Legislative Council

Visitors:

Bill Zolper
Molly Murray, News Journal
Marlene Mervine, Nanticoke River Watershed Conservancy

Andrew Manus
Brittany Chesser
Brian Winslow, Delaware Nature Society
John Still

I. Call to Order/Introductions/Announcements

Mr. Schroeder, Chairperson, called the September 16, 2015 Open Space Council meeting to order at 9:05 a.m. He welcomed Council members, staff, and visitors. He thanked Council members for their time and work on the State Resource Areas and the Land Protection Act.

II. Approval of August 5, 2015 Meeting Minutes

Mr. Schroeder asked for a motion to approve the August 5, 2015 minutes. Motion was made, seconded and unanimously approved.

III. Financial Report

Mr. Vickers presented the Financial Report:

• Realty Transfer Tax (FY13, 14, & 15):	\$12,067,561.57
• Previously Approved Projects (12):	(\$ 6,586,000.00)
• Anticipated Reimbursements (2 projects):	\$ 35,100.00
• Balance Available through December 15, 2016:	\$ 5,516,661.57
• FY16 Funds	\$ 0.00

IV. Old Business

A. Completed Projects since August 5, 2015

- Wilder Wildlife Area – Mersky Trust: purchased 92.547 acres with \$619,555.50 of federal Pittman-Robertson funds

Mr. Vickers reported that since the beginning of the Open Space Program in 1990 it completed **393 projects**, protecting **57,281.1111 acres**, using **\$260,396,998.52** of Open Space Program funds plus **\$97,441,260.18** of other funds for a total of **\$357,838,258.70**.

Mr. Vickers stated that staff is reviewing how to represent the Open Space Inventory in a different format. Currently, the properties are listed under named State Resource Areas. The idea is to move to listing properties under management areas (parks, wildlife areas, state forests, and state cultural sites) so that the general public would have a better sense of where the protected lands are located.

B. Agency Presentation – State Resource Areas Update

Mr. Schroeder noted there is a timeline for the completion of Standards and Criteria for the State Resource Area maps. (See attachment.)

Mrs. Stewart went over the dates and highlighted that there are three public workshops (one in each county) and one public hearing. Each of these meetings will be run by Council members Fleming and Holden. Once the standards and criteria are adopted, then DNREC will work on draft maps and hold workshops and a public hearing. This will be followed by special meetings to consider the maps and any proposed changes. The deadline for adoption of maps is May 2016.

Mr. Schroeder encouraged all Council members to attend the meetings, particularly the workshop in the county in which the Council member resides.

V. New Business

A. Council Open Discussion

Land Protection Act Revisions

Mr. Schroeder stated that the Council was charged by the Joint Sunset Committee to review the Land Protection Act and present it with revisions for consideration at its January 2016 meeting. He said Mr. Boswell agreed to head up a small working group, which included Mr. Humes and Mrs. Leventry. Council members received a redline version of the revisions, a clean version and a summary of revisions. (See attachments.)

Mr. Schroeder said the Council would send recommended revisions to the JSC. Then the JSC would consider moving it forward through the normal process for amending legislation. At various steps along the way the public would have the opportunity to make comments on any revisions.

Mrs. Fleming said she thought the revisions were good. However, since the revisions were so extensive she wondered if it would require a substitute bill as opposed to a series of amendments.

Mr. Boswell went over the proposed revisions. He noted that the group worked on removing inconsistencies, providing flexibility and clarification to make the Act consistent with the way the Council functions. He explained the changes in the definitions section; namely, changing "open space" to mean any lands, the acquisition of which will further one or more of the purposes of the Act. It was noted that sometimes we have to purchase all of a parcel in order to protect certain parts of the parcel or that sometimes structures are purchased that meet the purposes of the land managing agencies. A "stand-alone land" definition was added. These sites would require a 2/3 majority vote of the Council. "State resource area" was changed to reflect consistent use of the word land.

Mr. Boswell continued by going over sections 7506 and 7507. These sections refer to criteria, State Resource Areas and maps. The revisions pulled all of these items into one section and providing consistency in the terminology. The proposed criteria would be codified in Section 7506. The maps would be adopted through workshops and a public hearing. The maps would be reviewed every 10 years by the Department. However, the Council could require the Department to review the maps at any time. Section 7507 deals with an evaluation system for lands recommended for acquisition. The current ranking system would become the evaluation system. This includes reviewing a property for all of its features and how does it fit in with surrounding lands, plans, and funding opportunities. In order to protect a property it must be in an SRA or it could be a stand-alone site as defined.

Mr. Boswell stated the additional duties of the Council in the new Section 7508 were updated for consistency in language and ability to encourage or influence certain actions. The paragraph on

the Interagency Working Group was deleted since the Council has the right to receive technical assistance from the Department for any matter related to the Act. The work involved with the ranking/evaluation system involves information from many of the working group members listed in the current legislation.

Mr. Boswell discussed the current Section 7508 related to land use requirements and the counties. He went through a list of issues and reasons for deleting this section as written. He said the language is confusing and creates the perception that land in an SRA is subject to restrictions and thereby affects the value of the land. He noted that this was a major challenge during the attempt to update the maps in 2006 and it creates a fertile field for litigation against the counties and the state. Much of the land considered for protection has been protected already. Also agricultural lands are currently exempt from the provisions of the section. Implementation of the section as currently written leaves it up to each county without any coordinated oversight. And the burden of implementation, enforcement and possible litigation would fall to the counties. The funding to the counties noted in the current section would need to be revisited in terms of inflation and the cost of litigation. The Open Space Program has operated for 25 years without implementing this section. In the final analysis the Open Space Program is voluntary in nature; there is no right of eminent domain. New Castle and Kent counties, through each's existing ordinances and regulations, meets or exceeds the land protection issues addressed in the current Section 7508. As presented at past Council meetings, the counties are not really in favor of enforcing this part of the law. Kent County, in particular, is reluctant to deal with overlay zones since it lost a lawsuit pertaining to the very complex issue of zoning, districts and uniformity.

Mrs. Fleming said she thought Mr. Boswell and his team did a great job on revising the law. It now reflects how the Council has been operating for 25 years. She said we are abandoning ranking and now doing a rating.

Mr. Boswell agreed. He said the ranking or rating is still in place, but it also includes descriptive items and questions. So now it is an evaluation under the revised law. He went through these descriptive items currently used for projects.

Mr. Schroeder said it would be nice to see not only the numerical rating score, but also the descriptive items.

Mrs. Stewart said that some of the subject questions are answered during the Executive Session presentations.

Mrs. Fleming asked for clarification on one of the revised duties of the Council that discusses using tax codes to encourage landowners to maintain lands in an undeveloped state or to donate their lands to the State. She wondered if this was meant to be trade lands that could be sold later or, if not, then it needs further language that reflects qualifying lands.

There was general discussion on the use of the word "lands" in this section and did the Council want to be involved with lands that are not in SRAs. The discussion centered around how broad or narrow the Council involvement would be.

Secretary Small discussed open space in subdivisions and what is the Council or Department's role in this.

Mr. Vickers explained that the Department is involved in the protection of lands that do not come before the Council. These would be protected through the subdivision process.

Discussion followed regarding modifying the language by using the word "qualify" or are eligible for inclusion in an SRA or are "open space lands".

Mr. Kassab said that using either the open space definition or the SRA definition would work. Open space is broader based on its definition in the revised Act. This would better fit with the overall purpose of the Act.

All generally agreed to use the term "open space lands".

Senator Ennis asked a question about the footnotes and if further changes or reviews took place or needed to come before the Council.

Mr. Kassab said he would review to make sure there were no other changes of note for the Council to go over. He believes the footnotes are current through the latest changes from the last legislative session.

Mr. Bivens asked Senator Ennis if he was ok with the proposed revisions or if he thought it was too much to do as an amendment.

Senator Ennis said he thought it was a good job and did not have a problem with it.

Mr. Schutt also concurred that this was a great clean-up of the Act.

Secretary Small said that the way legislation is changed or amended now is much easier than it used to be. Now track changes are used so that anyone can see how the amendments evolved. He believed this is a major undertaking, but would be understandable.

Mrs. Fleming agreed and liked that the proposed revision to the Act would make it as clean as possible.

Mr. Vickers noted that Section 7509 on program administration would need to undergo an internal review.

Secretary Small said that any proposed changes would also need to be cross-referenced with other parts of the code to make sure everything is consistent.

Senator Ennis discussed the language stating the Council shall forward recommendations to the Secretary and the Secretary shall adopt those recommendations. He was concerned if the Council was changing from advisory to directing the Department to do certain things.

Mr. Boswell said that language is from the current law. He was following this to reflect that the Council recommends SRA maps and an evaluation system. He suggested that the language be changed to "The Secretary shall have the authority to adopt...". This would provide more discretion and move away from the directing language.

Mr. Schroeder again thanked the group for working on this and said he believed it was ready to move forward to the Joint Sunset Committee.

There was general discussion as to whether this was ready to move forward, needed more review and how it would fit with the Joint Sunset Committee's schedule.

Representative Brady said he would work with the JSC to keep it on track.

Mrs. Wagner said she is the legislative staff person that would get the proposed changes to the JSC. She said if she receives the information before December it would be discussed at the January JSC meeting.

Senator Ennis said he would also work with the JSC and staff to keep this moving forward

Mr. Holden moved that the revised Land Protection Act as presented be submitted to the Joint Sunset Committee with the understanding that Section 7509 may be modified along with other minor changes. This should be presented as the position of the Open Space Council.

Mrs. Fleming seconded the motion.

The motion passed unanimously.

Mr. Schroeder again thanked Mr. Boswell and the team for their work.

Mr. Vickers introduced Freddie Patterson as the new administrative assistant helping with Council matters. He reminded everyone to sign in.

B. Public Comments

Mr. Schroeder asked for any comments from the public.

Mr. Manus complimented Mr. Boswell on the work on updating the Act. He believed the Council should post the revised version of the Act on-line so that the public can see what is proposed and make comments to the Council or to the Joint Sunset Committee.

Mr. Zolper thanked the Council for its efforts in protecting open space, particularly in Sussex County.

Mr. Schroeder noted there was no other discussion and entertained a motion to go into executive session. Motion passed.

The Council adjourned to Executive Session at 10:15 a.m.

VI. Executive Session

A. Litigation Update

B. Discussion of Site Acquisitions

VII. Open Session

The Council returned to Open Session at 12:05 p.m. Mr. Holden left before the project recommendations.

Based on discussion in Executive Session, the Council recommended the following:

Division of Parks & Recreation

- Balkadi – Auburn Heights Preserve, New Castle County; purchase of conservation easement on 16.32 acres of land with a house and equestrian facility; donation of 9.0 acres of site to Division (valued at \$662,000) for a potential equestrian facility; protects ridgetop view and provides opportunity for a lodge and public facility; appraised easement value of \$1,700,000; use \$350,000 from previously approved project in the area and up to \$650,000 of new open space funds and \$700,000 from other sources; Council moved, seconded and agreed to recommend to the Secretary to purchase a conservation easement on the Balkadi property for up to \$650,000 in new Open Space funds and use previously approved funds of \$350,000 and to receive the 9.0 acre donation. Humes voting no; Leventry abstaining.

Division of Fish & Wildlife

- ABC Woodlands – Midlands Wildlife Area, Sussex County; purchase of 1,211 acres of forestland, stream corridor and farmland adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the ABC Woodlands property for \$10,000 of Open Space funds and \$3,990,455 of federal Pittman-Robertson funds.
- Aigner – Blackiston Wildlife Area, Kent County; purchase of 65 acres of forest, forested wetland, fossil outcrop, and field adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Aigner property for \$225,000 of Open Space funds and \$1,000 of other funds.
- Callegary – Woodland Beach Wildlife Area, Kent County; purchase of 51 acres of forest, forested wetland, coastal plain pond, and field adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Callegary property for \$350,000 of Open Space funds.
- Calloway – Nanticoke Wildlife Area, Sussex County; purchase of 48 acres of forest and Atlantic White Cedar stream corridor adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Calloway property for \$51,750 of Open Space funds and \$155,250 of Department of Defense and other funds.
- Chance – Eagle's Nest Wildlife Area, New Castle County; purchase of 60 acres of field, coastal plain pond and Blackbird Creek frontage adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Chance property for \$10,000 of Open Space funds and \$550,000 of federal Pittman-Robertson funds.
- Henry – Nanticoke Wildlife Area, Sussex County; potential purchase at Sheriff sale of 2 acre inholding of forest adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Henry property for up to \$35,000 of Open Space funds.
- King – Hearn's Pond Area, Sussex County; purchase of 0.34 acre of open lot adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the King property for \$40,000 of Open Space funds.
- McKinley/Merritt – DNERR Blackbird Creek Reserve, New Castle County; purchase of 67 acres of forest and coastal plain ponds adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the McKinley/Merritt property for \$345,000 of Open Space funds.
- Norris – DNERR Blackbird Creek Reserve, New Castle County; purchase of 43 acres of field, stream corridor and restoration area adjacent to protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in

fee the Norris property for \$238,630 of Open Space funds and \$276,370 of federal NOAA funds.

- Unruh – DNERR Blackbird Creek Reserve, New Castle County; purchase of 32 acres of field, restoration area and access to adjacent protected state land; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Unruh property for \$105,00 of Open Space funds and \$200,000 of federal NOAA funds.

VIII. Next Meeting Date/Adjournment

The next meeting of the Open Space Council is December 2, 2015 at Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, starting at 9:00 a.m.

Mr. Schroeder asked for a motion to adjourn. The meeting adjourned at 12:20 p.m.

Timeline for Standards and Criteria

- **August 3, 2015** – SPECIAL SRA COMMITTEE MEETING
- **August 5, 2015** – SPECIAL OSC MEETING
- **September 16, 2015** – *OSC meeting*
 - Set dates for public workshops and public hearing on S&C
- **September 21, 2015** – Public Workshop – Georgetown Library
- **September 22, 2015** – Public Workshop – Dover Library
- **September 29, 2015** – Public Workshop – Brandywine Hundred
- **October 20, 2015** – Public Hearing –Dover Library
- **November 18, 2015** – SPECIAL SRA COMMITTEE MEETING
 - All public comments must be received and presented
 - Committee may recommend modifications of S&C
- **December 2, 2015** – *OSC meeting*
 - OSC finalize S&C and forward to DNREC for adoption
- **December** – **February** – DNREC drafts SRA maps based on S&C

Timeline for Standards and Criteria

- **February 17, 2016** – SPECIAL SRA COMMITTEE MEETING
 - DNREC present draft maps to group
- **March 2, 2016 – OSC meeting**
 - *DNREC present draft maps to the OSC*
- **Between March 2 and April 20** – 3 public workshops and 1 public hearing
- **April 20, 2016** – SPECIAL SRA COMMITTEE MEETING
 - Public comments reviewed and modifications considered
- **April 27, 2016 – SPECIAL OSC MEETING**
 - Review maps and may recommend them for adoption or additional revisions, if needed
- **May 11, 2016** – If changes needed, changes must be made by this date
- **May 18, 2016** – OSC must meet about these changes
 - This 14/ 21 day process will continue until maps are adopted
- **May 2016** – DNREC’s deadline for SRA maps

LAND PROTECTION ACT – Draft Revisions for September 16, 2015
Open Space Council Meeting

Summary of Draft Revisions by Section

7501. Short title – no change

7502. Declaration of policy – minor changes

7503. Purpose – minor changes

7504. Definitions – modified “open space” by relating it to the purpose of the Act; modified “state resource area” by relating it to the process contained within the Act; added “stand-alone land”; deleted “overlay zone” and “project” since both are no longer in the draft revised version of the Act; other minor changes

7505. Delaware Open Space Council – minor changes; includes recommended changes from the Joint Sunset Committee

7506. Criteria; SRAs; SRA maps – revised section combines some parts of current sections 7506 and 7507; codifies the new criteria; clarifies the Council and Department roles in the SRA map process; changes SRA map review from every 5 years to every 10 years; and refers to the SRA maps as guidance maps for the counties and municipalities

7507. Evaluation system and acquisition of lands – provides for using an evaluation system (our current “ranking” system) to determine lands for acquisition; lands to be acquired should be in an SRA or could be a stand-alone site (if recommended by a 2/3rds majority of all voting members of the Council)

7508. Additional powers and duties of the Council – deleted duties that were moved and clarified in previous sections; deleted paragraph on interagency working group since in section 7505 the Department is to provide any technical assistance requested by the Council

7509. Program administration – minor changes, possibly subject to others after further review

7510. Zoning and use – no change

The major change in the draft revision is the deletion of the current Section 7508 Land use requirements. The removal of this section takes away the inconsistency, uncertainty and potentially unenforceability aspects of the section’s provisions.

§ 7501. Short title, DE ST TI 7 § 7501

West's Delaware Code Annotated
Title 7. Conservation
Part VII. Natural Resources
Chapter 75. Delaware Land Protection Act

7 Del.C. § 7501

§ 7501. Short title

Currentness

This chapter shall be known and may be cited as the "Delaware Land Protection Act."

Credits

67 Laws 1990, ch. 352, § 1.

7 Del.C. § 7501, DE ST TI 7 § 7501

Current through 80 Laws 2015, ch. 169. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7502. Declaration of policy, DE ST TI 7 § 7502

West's Delaware Code Annotated
Title 7, Conservation
Part VII. Natural Resources
Chapter 75. Delaware Land Protection Act

7 Del.C. § 7502

§ 7502. Declaration of policy

Currentness

The General Assembly finds that:

(1) The provision of lands for public recreation and conservation of natural resources promotes biological diversity, public health, prosperity and general welfare and is a proper responsibility of government.

(2) Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come.

(3) The expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes.

(4) Rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character as well as many sites with important cultural and natural resources. These areas, and spaces and sites, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic, recreational or economic assets.

(5) The State must continue to act, and now to protect and to help local governments to protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.

(6) It is the public policy of the State and its political subdivisions that the preservation of open spaces shall be accomplished through the acquisition of interests or rights in real property, or donation of said lands, and that said acquisition constitutes a public purpose for which public funds have been expended or advanced and should be continued.

Credits

§ 7502. Declaration of policy, DE ST TI 7 § 7502

67 Laws 1990, ch. 352, § 1.

7 Del.C. § 7502, DE ST TI 7 § 7502

Current through 80 Laws 2015, ch. 169, Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7503. Purpose, DE ST TI 7 § 7503

West's Delaware Code Annotated
Title 7. Conservation
Part VII. Natural Resources
Chapter 75. Delaware Land Protection Act

7 Del.C. § 7503

§ 7503. Purpose

Currentness

(a) State agencies may acquire any interest in ~~real property~~land for the following purposes, to carry out and expand on the intent of the conservation program described in ~~Volume 65, Chapter 212 of the Laws of Delaware~~this Act:

- (1) To protect and conserve all forms of natural and cultural resources;
- (2) To protect and conserve the biological diversity of plants and animals and their habitat;
- (3) To protect existing or planned parks, forests, wildlife areas, nature preserves or other recreation, conservation or cultural sites by controlling the use of contiguous or nearby lands;
- (4) To preserve sites of special natural, cultural, ~~historical, archeological~~ or geological interest;
- (5) To connect existing open spaces into a cohesive system of greenways and resource areas;
- (6) To provide for public outdoor recreation; and
- (7) To allow for water resource conservation.

(b) State agencies may acquire ~~property or rights in real property~~land pursuant to this chapter by the use of direct acquisition for cash, by purchase money mortgage, by installment sale or by other methods or incentives as determined by the Secretary after consultation with the Secretary of Finance. State agencies shall not exercise the "right of eminent domain" to carry out the provisions of this chapter.

§ 7503. Purpose, DE ST TI 7 § 7503

Credits

67 Laws 1990, ch. 352, § 1.

7 Del.C. § 7503, DE ST TI 7 § 7503

Current through 80 Laws 2015, ch. 169, Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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2015 Delaware Revisions to 2015 Acts by the Delaware Code Revisors

West's Delaware Code Annotated
Title 7. Conservation
Part VII. Natural Resources
Chapter 75. Delaware Land Protection Act

7 Del.C. § 7504

§ 7504. Definitions

Current version

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section except where the context clearly shows a different meaning:

(1) "Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to Chapter 47 of this title, as it may be amended or superseded [repealed].

(2) "Council" means the Delaware Open Space Council established pursuant to this chapter.

(3) "Department" means the Department of Natural Resources and Environmental Control.

(4) "Interest in real property" means any right in real property, improvements thereto, or water including but not limited to a fee simple, easement, remainder, future interest, lease, license or covenant of any sort, option or contractual interest or right concerning the use of or power to transfer property.

(5) "Land" or "lands" means real property, including improvements thereon; rights of way; water and riparian rights; easements, privileges and all other rights or interests of any kind or description in, relating to or connected with real property, ~~or water.~~

(6) "Open space" means any open lands the acquisition of which will further one or more of the purposes of this Act enumerated in Section 7503(a)(1)-(7), inclusive, characterized by (i) great natural scenic beauty, or (ii) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas. For the purposes of this chapter, "open space" shall include significant cultural, historical or archaeological sites as determined by state plans and policies adopted by the Bureau of Historic and Cultural Affairs.

§ 7504. Definitions, DE ST TI 7 § 7504

~~(7) "Overlay zone" means a local zoning district and its associated use, design and environmental performance standards that is superimposed on the underlying zone for the purpose of providing additional protection.~~

(8) "Permanent protection" means the acquisition by purchase, gift, grant, bequest, devise or otherwise the fee or any lesser interest, development right, easement, covenant or other contractual right in real property~~land~~ in perpetuity necessary to achieve the purposes of this chapter.

~~(9) "Project" means the planning for, and the acquisition and development of property, undertaken to achieve the purposes of this chapter.~~

(10) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

~~(11) "Stand-alone land" means open space land that is not included in a state resource area delineated on state resource area maps but that is eligible for inclusion in a state resource area. The use of such term in either the singular or the plural shall include the other.~~

~~(11.2)~~ (11) "State agency" means, and shall apply exclusively to, the following units of state government which manage natural and cultural resources:

a. Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Fish and Wildlife);

b. Department of State (Division of Historical and Cultural Affairs); and

c. The Department of Agriculture (~~Division of Resource Management~~ Delaware Forest Service).

~~(12.1)~~ (12) "State resource area" means an area of open space land designated as a state resource area and delineated on state resource area maps adopted by the Department in accordance with the provisions of this chapter~~Act~~, or state resource area maps in existence prior to those adopted hereunder. The use of this term in either the singular or the plural shall include the other. The term state resource area is sometimes referred to herein by the acronym "SRA" those open-space lands duly identified by the Council and adopted by the Department for protection.

Credits

§ 7504. Definitions, DE ST TI 7 § 7504

67 Laws 1990, ch. 352, § 1; 72 Laws 2000 (2nd Sp. Sess.), ch. 489, § 94, eff. Aug. 28, 2000.

Notes of Decisions (1)

7 Del.C. § 7504, DE ST TI 7 § 7504

Current through 80 Laws 2015, ch. 169. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7505. Delaware Open Space Council, DE ST TI 7 § 7505

West's Delaware Code Annotated
Title 7. Conservation
Part VII. Natural Resources
Chapter 75. Delaware Land Protection Act

7 Del.C. § 7505

§ 7505. Delaware Open Space Council

Effective: July 28, 2015

Currentness

(a) There is created a Delaware Open Space Council to advise the Secretary on all matters relating to the administration, implementation and financing of ~~this protection~~ the conservation program described in this Act; site selection; methods of protection; and interagency and intergovernmental coordination among public and private land preservation agencies.

(b) The Council shall have 9 members. The Council shall consist of the following:

(1) One member of the Senate appointed by the President Pro Tempore to serve at the pleasure of the President Pro Tempore.

(2) One member of the House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House.

(3) Seven members appointed by the Governor to serve at the pleasure of the Governor, at least 4 of whom shall be persons who have been active or have shown an interest in preserving open space. The membership shall be representative of all counties in the State. Appointments shall be for 4-year terms, provided that the terms of newly appointed members will be staggered so that no more than 4 appointments shall expire annually. Members may be appointed for less than 4 years to ensure that members' terms expire on a staggered basis. A member appointed under this paragraph shall continue to serve beyond the expiration of the member's term until a successor is duly appointed.

(4) No more than 5 Council members shall be of 1 political party; provided however, that failing or declining to announce one's political affiliation shall not make such person ineligible for appointment.

(5) The Secretaries of Agriculture and State, the Director of the Delaware Economic Development Office, and the State Liaison Officer for the federal Land and Water Conservation Fund, or their duly authorized designees, who shall be ex officio members of the Council without voting powers.

§ 7505. Delaware Open Space Council, DE ST TI 7 § 7505

(c) The Governor shall appoint the chairperson of the Council.

(d) The Department of Natural Resources and Environmental Control shall furnish clerical, technical, legal and other services required by the Council in the performance of its official duties.

(e) Members of the Council shall receive no compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The Council shall hold at least 1 regular meeting in each quarter of each calendar year and, with the assistance of the Department, shall keep a record of its proceedings. All proceedings of the Council shall be conducted in accordance with Chapter 100 of Title 29.

(f) For purposes of conducting business of the Council, 5 voting members shall constitute a quorum. Except as otherwise provided herein, a majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Council.

(g) The Council may adopt procedural rules and regulations to carry out the provisions of this chapter.

(h) A Council member may be removed by the member's appointing authority at any time, without notice and hearing, and for any reason, including for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. A member shall be deemed in neglect of duty if they are absent from 3 consecutive Council meetings without good cause or if they attend less than 50% of Council meetings in a calendar year.

Credits

67 Laws 1990, ch. 352, § 1; 69 Laws 1994, ch. 458, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 74 Laws 2004, ch. 394, §§ 1-6, eff. July 2, 2006; 80 Laws 2015, ch. 133, § 1, eff. July 28, 2015

Notes of Decisions (1)

7 Del.C. § 7505, DE ST TI 7 § 7505

Current through 80 Laws 2015, ch. 169. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7506. Powers and duties of the Council, DE ST TI 7 § 7506

§ 7506 ~~Criteria; system; SRAs; and SRA maps.~~

(a) ^A To be eligible for inclusion in a state resource area, an area of open space land must include or exhibit, in whole or in part, one or more of the following:

- (1) ~~land that contains endangered, threatened, or ecologically significant species, Species of Greatest Conservation Need (SGCN) as defined in the Delaware Wildlife Action Plan, or natural ecosystems;~~
- (2) ~~land with a significant potential to support endangered, threatened, or ecologically significant species, SGCN, or natural systems;~~
- (3) ~~land that is important because of its historical, archaeological or cultural value or its proximity to a historically significant area;~~
- (4) ~~land that includes or enhances important wildlife habitat or migration corridors as well as potential wildlife habitat for migration corridors;~~
- (5) ~~land with significant forest resources;~~
- (6) ~~land with wetlands, floodplains, or other lands necessary for the protection of water resources;~~
- (7) ~~land that contains significant or unique ecosystems, natural features, or geological features;~~
- (8) ~~land which is an inholding, contiguous to or nearby lands that are already preserved or protected, or planned to be preserved or protected, by federal, state, local, or other conservation agencies, groups or entities;~~
- (9) ~~land that will provide for public outdoor recreation;~~
 - ~~land that will allow natural systems or plants and animals to accommodate or adapt to climate change or other large-scale changes in ecosystem processes;~~
 - ~~land of significant scenic beauty;~~
 - ~~land that will provide a buffer for urban areas;~~
 - ~~land that provides water quality protection for rivers, streams, lakes, ponds, inland bays, other water resources of the State;~~
- (10) ^A land having other characteristics that would make its acquisition consistent with and promote one or more of the purposes of this Act.

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Comment [WK1]: Not currently adopted as proposed.

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§ 7506. Powers and duties of the Council, DE ST TI 7 § 7506

(b3) The Department, ~~shall, designate, from the open space lands eligible for inclusion as state resource areas in accordance with subsection (a) of this section, those open space lands that it determines should be included in state resource areas and delineate them on maps ("proposed SRA maps"). The Department shall hold a public hearing, and may hold public workshops in each of the counties of the State of Delaware as a precursor to the public hearing, to receive comments from the public on the proposed SRA maps. After the public hearing, the proposed SRA maps, including any revisions to the same as the result of any recommendations by the Department or the Council, shall be presented by the Department to the Council for review. After such review, the proposed SRA maps shall be prepared by the Department in final form to include revisions, if any, recommended by the Council during its review. Then, the final SRA maps shall, with the approval of a majority of all of the voting members of the Council, be forwarded to the Department with a recommendation for adoption by the Department. The Secretary shall adopt the final SRA maps so forwarded to him or her by the Council.~~

(c4) The Department shall review the SRA maps ~~at maps shall be reviewed at least every 10 years, and the SRA maps may be updated by the Department in the Department's discretion. The initial 10 year period shall be measured from the initial adoption of the SRA maps by the Department. The procedure for updating the SRA maps shall be the same as that outlined in this section for their initial adoption by the Department. The Council may, in its discretion and as it deems necessary, request that the Department review or update the SRA maps at anytime.~~

Comment [w2]: Added to address Paul's Concern.

(d5) Copies of the SRA maps initially adopted by the Department shall be sent by the Department to the affected county or counties and municipalities for their guidance.

§ 7506. Powers and duties of the Council, DE ST TI 7 § 75076

§7507. Evaluation system and acquisition of lands.

(a4) The Council shall develop a system ("evaluation system") to evaluate open space lands being considered for acquisition under the provisions of this chapterAct. The Council shall review the evaluation system and, after its review and with any changes it approves, the Council shall forward the evaluation system to the Department with a recommendation for adoption. Such recommendation shall require the approval of a majority of all of the voting members of the Council. The Secretary shall adopt the evaluation system recommended to him or her for adoption by the Council. At the discretion of the Council, the evaluation system may be amended from time to time in the same manner as provided herein for its adoption.

(b2) The Council shall review those lands brought before it by the Department for acquisition and recommend to the Department for acquisition those lands that it determines should be protected and acquired under the provisions of this chapterAct; provided, however, that any lands recommended for acquisition must either (i) be located in a state resource area shown on an adopted SRA map, or (ii) qualify as stand-alone lands and receive a recommendation for acquisition approved by a 2/3rds majority of all the voting members of the Council.

(c3) The Department shall have the authority to acquire lands recommended to it for acquisition according to the provisions of this section.

§ 7506. Powers and duties of the Council, DE ST TI 7 § 7506

West's Delaware Code Annotated

Title 7. Conservation

Part VII. Natural Resources

Chapter 75. Delaware Land Protection Act

7 Del.C. § 7506

§ 7506. Additional Powers and duties of the Council

Effective: April 8, 2010

Currentness

In addition to its other powers and duties hereunder, The Council shall:

(1) Review and recommend to the Department for adoption, after a public hearing, criteria for delineation and dedication of open space;

(2) Review and recommend to the Department for adoption, after public hearing, state resource area maps;

(3) Review and recommend to the Department for approval lands for permanent protection according to the adopted state resource area maps;

(4) Review and recommend to the Department for adoption, a ranking system to establish land acquisition or permanent protection priorities;

(5) Advise and consult with the Secretary of the Department of Natural Resources and Environmental Control and with other state land preservation agencies and staff on preservation matters;

(6) Advise and consult regarding any change from permanently protected status of open space lands acquired or otherwise protected;

(7) Use the "Greenspaces for Delaware's Future" report prepared by the Department in 1990 as a starting point for carrying out the duties and purposes of this chapter;

§ 7506. Powers and duties of the Council, DE ST TI 7 § 7506

(38) Promote and assist, in conjunction with state agencies, in the development and establishment of creative and innovative methods to secure the permanent protection of open space ~~land~~ including but not limited to:

a. Local and regional land trusts;

b. Conservation and preservation easements on a statewide basis;

c. Purchase of less than a fee simple ~~interest in real~~ property rights;

d. Program or programs to create financial incentives for private sector contributions to establish operations and maintenance funds at state resource areas;

(459) Encourage the Secretary to ~~analyze~~, in conjunction with the Department of Finance, the state and local tax codes and to formulate incentives to encourage landowners and developers to ~~donate or retain ownership of~~ maintain their lands in an undeveloped state or to ~~donate their lands to the State~~;

(10) Coordinate with an interagency working group to be appointed by the Secretary that shall provide technical advice on all matters relevant to this chapter. At a minimum the working group shall consist of state agency technical staff from the Department of Agriculture, the Delaware Economic Development Office, and the Divisions of Historical and Cultural Affairs, Fish and Wildlife, and Parks and Recreation. Nonstate agency membership shall be comprised of representatives from each county government, which may include up to 1 member each from the Planning Department, Parks and Recreation, and of Executive Office, as determined by the County Executive or Levy Court President. The Secretary shall select a chairperson from among the members. The group will work to maximize the use of funds, and use of protection methods other than fee simple acquisition to permanently protect statewide priority projects through utilization of open space criteria and the ranking system adopted by the Department.

(5644) ~~Work with~~ encourage the Department, private nonprofit conservation groups and interested private sector interests to preserve and protect open space for the benefit of the citizens of the State;

(6742) Recommend to the Department for adoption, after public hearing, any rules and regulations as may be necessary to carry out any provisions of this chapter.

Credits

67 Laws 1990, ch. 352, § 1; 69 Laws 1994, ch. 458, § 1; 77 Laws 2010, ch. 236, § 1, eff. April 8, 2010.

Notes of Decisions (1)

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§ 7506. Powers and duties of the Council, DE ST TI 7 § 75086

7 Del.C. § 7506, DE ST TI 7 § 7506

Current through 80 Laws 2015, ch. 169, Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7506. Powers and duties of the Council, DE ST TI 7 § 75086

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7 Del.C. § 7506, DE ST TI 7 § 7506

Current through 80 Laws 2015, ch. 169, Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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7 Del.C. § 7507

§ 7507. State resource areas

Continued

(a) In furtherance of the purposes of this chapter, the Council shall, in conjunction with the interagency working group, develop and forward to the Department for adoption:

(1) Standards and criteria consistent with the purposes of this chapter for evaluating the lands and waters of the state for inclusion as state resource areas in the open space program;

(2) A system for determining the existence and location of state resource areas, their degree of endangerment, an evaluation of their importance, and information related to their natural, historic or open space values;

(3) A priority ranking system for the acquisition of land, lands and waters or rights therein;

(b) The Department shall carry out the following actions in furtherance of this chapter:

(1) Designate and adopt state resource areas for inclusion in the open space program. State resource areas shall be shown on maps of sufficient scale to identify individual properties for planning and zoning purposes.

(2) Update the state resource area maps, in consultation with county governments, at least every 5 years.

(c) Upon adoption of the state resource area maps the Department shall send copies to the affected county for inclusion in the conservation element of their respective comprehensive plans, and send copies to affected municipalities for inclusion in their respective comprehensive plans. Updated state resource area maps shall also be submitted to said agencies no later than 1 year prior to mandatory comprehensive plan updates as required in the Delaware Code.

(d) It is the intent of the General Assembly that the Council shall, in conjunction with the Department, analyze the feasibility and advisability of establishing a right of first refusal to purchase any property located within a state resource area. The Council shall propose and recommend to the General Assembly legislation to accomplish the foregoing, after holding public hearings with respect to such proposal.

Credits

67 Laws 1990, ch. 352, § 1

Notes of Decisions (4)

~~7 Del.C. § 7507, DE ST. tit. 7, § 7507~~

Current through 80 Laws 2015, ch. 169. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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~~West's Delaware Code Annotated~~

~~Title 7, Conservation~~

~~Part VII, Natural Resources~~

~~Chapter 75, Delaware Land Protection Act~~

~~7 Del.C. § 7508~~

~~§ 7508. Land use requirements~~

~~Continued~~

(a) In order to maintain the protection of the unique ecological functions of state resource areas in a manner consistent with the purposes of this chapter, each county government shall ~~adopt and incorporate overlay zoning ordinances, guidelines and specific technically-based environmental performance standards, design criteria and mitigation requirements, where appropriate, that shall apply to significant ecological functions and identified historic and archaeological sites on these lands. The guidelines shall designate the boundaries to which they apply and provide a procedure for the appeal of such boundary designations. The zones created hereunder shall overlie and not replace the existing zoning or preclude or prejudice any change thereto. The standards specified in the guidelines shall include, but not be limited to:~~

(1) The establishment of frontage, building height, setback and site design requirements that shall apply in state resource areas and which may apply to lands immediately adjacent thereto, which will result in residential, commercial and industrial or other uses which minimize the loss of open space and associated values of state resource area lands.

(2) The establishment of technically-based specific environmental performance standards and design criteria that shall apply in and may apply adjacent to state resource areas in order to protect the values of said lands.

(b) The powers granted counties under Title 9 as they pertain to the protection of any natural feature or resource governed by this title, shall be exercised through the adoption of ordinances and land use requirements duly enacted or approved by the county government of each county. Such natural resource protection requirements shall restrict land use activity by means of enactment and enforcement of specific technically-based environmental performance standards, design criteria and mitigation requirements consistent with state law and regulations. Minimum lot sizes, density limitations, and prescribed percentages of impervious surface and use limitations and prohibitions shall not constitute performance standards as required herein, however, such limitations and restrictions shall be adopted where appropriate, to establish an alternative means of complying with the purpose and requirements of the overlay zones. It shall be the option of the owner of land to satisfy either (1) the county environmental performance standards, design criteria and mitigation requirement, or (2) the overlay zoning ordinances where such options are made available. The guidelines, performance standards, design criteria of this subsection shall not apply to lands producing agricultural commodities as defined in Chapter 7 of Title 3 or lands under state agency ownership.

(c) In order to encourage landowners and developers to promote the objectives of this chapter, each county government shall evaluate density bonuses, credits or other incentives and allowances to land owners and developers for lands or resource

protection rights thereto, to encourage the permanent protection of open space and/or any natural resource as governed by this title and elect such measures as they deem appropriate. The counties shall evaluate and consider enactment of measures to allow such bonuses, allowances, incentives and credits to have the ability to be sold, transferred or applied, as a matter of right, to other lands to the maximum density permitted by the applicable zoning classification, so long as such action is consistent with the comprehensive plan of the county.

(d) Counties shall adopt zoning ordinances that enact these guidelines and standards within 18 months after receipt of state resource area maps from the Department. If a county government does not comply with this 18-month enactment requirement, said county shall be ineligible for any funds negotiated for but unexpended under subsection (e) of this section and return to the State an amount equal to funds expended under an agreement negotiated under subsection (e) of this section.

(e) The Secretary shall negotiate an agreement and grant a one-time amount of up to \$100,000 to each county to assist with compliance of the requirements in this section.

Credits

67 Laws 1990, ch. 352, § 1.

7 Del.C. § 7508, DE ST. TI. 7 § 7508

Current through 80 Laws 2015, ch. 160. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7509. Program administration, DE ST TI 7 § 7509

West's Delaware Code Annotated

Title 7. Conservation

Part VII. Natural Resources

Chapter 75. Delaware Land Protection Act

7 Del.C. § 7509

§ 7509. Program administration

Currentness

(a) The Department shall administer the conservation program described in this chapter ~~Act~~. The Department shall develop, periodically review and maintain a comprehensive statewide outdoor recreation and conservation plan ~~for consideration and approval by the Council, which shall establish criteria and priorities for the application of funds available for the purposes of this chapter.~~ The Department's existing statewide comprehensive outdoor recreation plan shall be the initial plan for the purposes of this subsection.

(b) The Department, in conjunction with other public and private land management organizations, shall undertake a special program to acquire or otherwise permanently protect lands within established state resource areas and other lands identified as having state significance according to the procedures of this chapter ~~Act~~.

(c) Rules and regulations adopted, and contracts entered into, with respect to the Delaware Land and Water Conservation Trust Fund as originally established under [former] § 4733 of this title [repealed] shall remain in effect with respect to the Conservation Trust Fund until amended, revoked or otherwise modified pursuant to this subsection.

(d) Direct costs associated with the administration of the conservation program described in this chapter shall be paid from the Land and Water Conservation Trust Fund.

(e) Five years after July 13, 1990, and every 5 years thereafter through the life of the program, the Secretary and the Council shall report to the Governor and the General Assembly on the status and accomplishments of the program with recommendations regarding continuation of land preservation activities ~~the conservation program described in this Act.~~ In addition to the requirements outlined above, the Secretary and the Council shall file annual reports with the General Assembly detailing accomplishments and activities of the program, including its impact on the tax base of the counties.

Credits

67 Laws 1990, ch. 352, § 1.

§ 7509. Program administration, DE ST TI 7 § 7509

7 Del.C. § 7509, DE ST TI 7 § 7509

Current through 80 Laws 2015, ch. 169. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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§ 7510. Zoning and use, DE ST TI 7 § 7510

West's Delaware Code Annotated
Title 7. Conservation
Part VII. Natural Resources
Chapter 75. Delaware Land Protection Act

7 Del.C. § 7510

§ 7510. Zoning and use

Current through

Notwithstanding any provision of this chapter to the contrary, no open space or other area acquired primarily for recreational use shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie

Credits

72 Laws 1999, ch. 156, § 2, eff. July 16, 1999.

7 Del.C. § 7510, DE ST TI 7 § 7510

Current through 80 Laws 2015, ch. 169, Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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